



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Refers

SWERB SC5/SA5-

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*FYI - copy of
order in SWERB - "Access" site
lynn*



OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Recent Favorable District Court Decision Concerning
Site Access -- U.S. v. Sidney Mathis, et al., No.
4:89-cv-00232 (N.D. Ga. 1989) (South Marbletop Road
Landfill Site, Walker County, Georgia)

FROM: Glenn L. Unterberger *Glenn*
Associate Enforcement Counsel for Waste

TO: Regional Counsel, Regions I-X
Bruce M. Diamond, Director, OWPE
Lisa K. Friedman, Associate General Counsel, OGC

On December 29, 1989, the U.S. District Court for the
Northern District of Georgia granted the government's Motion for
an Immediate Order in Aid of Access, pursuant to CERCLA Section
104(e)(5). The Court does not require EPA to compensate the
defendants for site access. A copy of the decision is attached.

Defendants are PRPs who own property which is part of this
CERCLA site. Defendants repeatedly refused attempts by EPA's
designated representative to negotiate access agreements. The
designated representative then asked EPA to arrange for site
access. The defendants refused to respond to EPA's subsequent
attempts to negotiate access agreements. The government's motion
followed.

The order gives EPA and its representative unimpeded access
to defendants' property to conduct an RI/FS and any subsequent
remedial measures. The order also enjoins defendants from
obstructing or interfering with EPA's activities at the site.

If you would like further information, please contact Joan
Gillespie of my staff at FTS 245-3587 or Rob James in Region IV
ORC at FTS 257-2641.

Attachment

cc: James M. Strock, Assistant Administrator (without
attachment)
Regional Counsel Hazardous Waste Branch Chiefs
OECM-Waste Attorneys (without attachment)

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Rome

DEC 29 1989

LUTHER D. THOMAS, Clerk /
By: *V. [Signature]*
Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

SIDNEY MATHIS, et al.

Defendants.

Civil Action No.

4109

CV 0232-81

ORDER

The Court having considered the Motion of the United States for an Immediate Order in Aid of Access, the memorandum of points and authorities in support thereof, and the opposition thereto, it is hereby

ORDERED as follows:

1. The United States' Motion for an Immediate Order in Aid of Access, pursuant to Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9604(e)(5), is GRANTED.

2. Defendants Sidney Mathis, Mose Mathis, Janie Upshaw Mathis, Lettie Sue Mathis Davis, James D. Mathis, Ida Lee Mathis Palmer, Betty Lou Mathis Foster, and Carrie Ann Mathis Harris, are hereby prohibited and enjoined from interfering with or obstructing, in any way, those activities which are authorized by this Order.

3. Employees, officials, and designated representatives of the Environmental Protection Agency ("EPA") shall be permitted

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full and complete access to (1) the real properties or portions acquired by Defendants Sidney Mathis and Mose Mathis and/or their predecessors in title under deed recorded in the Superior Court of Walker County, Georgia, Deed Book 360, page 458, and (2) the real property referenced by Tax Card Number 0-265 022 in the Office of the Tax Assessor, Walker County, Georgia, as more fully described in Exhibit No. 1 to Plaintiff's Memorandum of Points and Authorities in Support of Motion for an Immediate Order in Aid of Access, at any and all times for the purpose of conducting any and all response actions under CERCLA or to otherwise enforce provisions of CERCLA. Response activities are those activities defined in CERCLA, 42 U.S.C. §§ 9601(23), 9601(24), and 9601(25). Response activities include, without limitation, performance of the Remedial Investigation and Feasibility Study ("RI/FS") as required pursuant to the Administrative Order on Consent issued to the Velsicol Chemical Corporation ("Velsicol") by the United States Environmental Protection Agency, Region IV, EPA Docket No.: 88-22-C, and all construction, sampling, monitoring, surveying, testing, and information gathering associated therewith, and design, implementation, and construction of any remedy selected by EPA for the Mathis Brothers Landfill/South Marble Top Road Landfill Superfund Site ("the Site"), including all operation and maintenance activities associated therewith.

4. For the purpose of performing the RI/FS, EPA's designated representatives shall include employees and officials of Velsicol and Memphis Environmental Center, Inc. ("MEC"), and their contractors.

5. Employees, officials, and designated representatives of the EPA may exclude unauthorized visitors and animals from the property which is the subject of this Order while response activities are being conducted and may take other reasonable steps to prevent interference with the performance of response activities at the Site.

6. This Order shall terminate upon EPA's written notification to Defendants and to the Court that access is no longer necessary to conduct response activities at the Site.

7. This matter is hereby DISMISSED without prejudice to the rights of any party to seek amendment of this Order or other necessary relief during the life of this Order.

IT IS SO ORDERED.

Date: *October 23, 1989*


UNITED STATES DISTRICT JUDGE

Anna C. Thode, Esq.
Environmental Enforcement Section Land & Natural Resources
U.S. Department of Justice
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Ben Franklin Station
Washington, DC 20044